

AMENDED IN SENATE AUGUST 18, 2009

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 281**

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**Introduced by Assembly Member De Leon  
(Coauthor: Assembly Member Conway)**

February 12, 2009

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An act to add Article 2 (commencing with Section 5911) to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to agriculture.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 281, as amended, De Leon. Citrus disease prevention: California Citrus Pest and Disease Prevention Committee.

Existing law generally provides for the eradication of pests that threaten this state's agriculture. Existing law provides that there is in the Department of Food and Agriculture the California Citrus Advisory Committee, comprised as specified. The committee is required to develop and make recommendations to the Secretary of Food and Agriculture on all matters regarding the implementation of an inspection program, as provided.

This bill would create in the Department of Food and Agriculture the California Citrus Pest and Disease Prevention Committee, which would

consist of 17 members (14 producers in the citrus fruit industry, 2 citrus nursery operators, and one public member) to be appointed by the Secretary of Food and Agriculture, as specified. The bill would set out the powers and duties of the committee, including, among others, the authority to develop, subject to the approval of the secretary, a statewide citrus specific pest and disease work plan that includes informational programs to educate and train residential owners of citrus fruit, local communities, groups, and individuals on the prevention of pests, and diseases and their vectors, specific to citrus and programs for surveying, detecting, analyzing, and ~~treatment of~~ *treating* citrus pests and diseases. The bill would provide for a monthly assessment, as provided and for specified related purposes, to be paid by producers, as defined and except as provided, and remitted to the department and deposited into the Citrus Disease Management Account, which the bill would create in the Department of Food and Agriculture Fund. The bill would provide for a referendum voting procedure regarding the continued operation of these provisions.

Because this bill would impose assessment requirements on producers and handlers of citrus fruit, the violation of which would be a misdemeanor under other provisions of existing law, this bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 2 (commencing with Section 5911) is  
2 added to Chapter 9 of Part 1 of Division 4 of the Food and  
3 Agricultural Code, to read:

4  
5 Article 2. Citrus Disease Prevention

6  
7 5911. (a) The Legislature hereby finds and declares that the  
8 citrus killing diseases, Huanglongbing, citrus leprosis, citrus  
9 variegated chlorosis, and citrus canker, and the associated vectors

1 present a clear and present danger to California's citrus industry,  
2 as well as to other commodities and plant life.

3 (b) This article is intended to establish an industry-funded  
4 program to assist in combating pests, and diseases and their vectors,  
5 specific to citrus when found in California.

6 (c) This article is not intended to create new mandates or  
7 circumvent state and federal authority on citrus or other agricultural  
8 commodities.

9 (d) This article is not intended to establish a precedent, or to  
10 supersede or supplant in any way federal, state, or local government  
11 funding of efforts to combat citrus diseases and other pests in this  
12 state.

13 (e) The prevention and management of citrus diseases is a matter  
14 of public interest. The provisions of this article are enacted for the  
15 protection of the industry and in the exercise of the police power  
16 of the state for the purpose of protecting the health, peace, safety,  
17 and general welfare of the people of this state.

18 (f) The Legislature finds and declares that the California citrus  
19 industry creates one billion eight hundred million dollars  
20 (\$1,800,000,000) in citrus fruit, another one billion two hundred  
21 million dollars (\$1,200,000,000) in economic activity, and employs  
22 an estimated 25,000 people in the state.

23 5912. Unless the context otherwise requires, the following  
24 definitions shall govern the construction of this article:

25 (a) "Carton" means a unit equivalent to 40 pounds of citrus fruit.

26 (b) "Citrus" means "citrous" and any plants of the genera Citrus,  
27 Fortunella, Poncirus, and all hybrids having one or more of such  
28 as parents.

29 (c) "Citrus disease" includes any infectious, transmissible, or  
30 contagious disease or vector infesting citrus trees.

31 (d) "Committee" means the California Citrus Pest and Disease  
32 Prevention Committee.

33 (e) "Department" means the Department of Food and  
34 Agriculture.

35 (f) "Districts," except as otherwise provided in Section 5914,  
36 consist of the following geographical areas:

37 (1) The Southern District consists of all growing areas in San  
38 Bernardino County and all other areas to the south, west, and east  
39 of San Bernardino County that are not included in any other district.

(2) The Coastal District consists of all growing areas in the Counties of Monterey, San Luis Obispo, Santa Barbara, and Ventura.

(3) The Kern District consists of all growing areas in Kern County.

(4) The Tulare District consists of all growing areas in Tulare County.

(5) The Northern District consists of all growing areas in Fresno County and all other areas to the north that are not included in any other district.

(g) “Handler” means a person or entity who receives citrus fruit from a producer and who prepares the citrus fruit for fresh market.

(h) “Marketing season” begins October 1 of each year and ends September 30 of the next year.

(i) “Person” means a producer, handler, or any other entity that holds title to citrus fruit subject to assessment.

(j) “Producer” means any person in this state who is a grower of citrus fruit, but does not include a citrus nursery.

(k) “Secretary” means the Secretary of Food and Agriculture.

(l) “Specific to citrus” means of exclusive or principal concern to citrus as opposed to other commodities.

5913. (a) There is hereby created the Citrus Disease Management Account in the Department of Food and Agriculture Fund.

(b) The Citrus Disease Management Account shall consist of ~~money transferred from the General Fund and~~ money from federal, industry, and other *non-General Fund* sources. Money from federal, industry, and other non-General Fund sources shall be available ~~for expenditure without regard to fiscal year upon appropriation by the Legislature~~ for the sole purpose of combating citrus specific pests, diseases, and their vectors.

5914. (a) There is hereby created in the department the California Citrus Pest and Disease Prevention Committee.

(b) The committee shall be composed of 17 members. Fourteen producer representatives shall be appointed by the secretary from nominations received from each district. District representation shall be determined by the secretary on a proportional basis equal to the production history of each district for the previous two years. The secretary shall also strive to appoint producers representing the different varieties of citrus fruit produced in California.

1 (c) One member shall be a public member, appointed by the  
2 secretary from the nominees recommended by the committee.

3 (d) Two members shall be citrus nursery operators, one  
4 representing northern California, defined as counties in the San  
5 Joaquin Valley and north but not including counties on the coast  
6 who shall be represented by a southern California designee, and  
7 one representing southern California, appointed by the secretary  
8 from the nominees recommended by the committee.

9 (e) (1) The initial members of the committee shall be appointed  
10 within 30 days of the enactment of this article. The members shall  
11 serve staggered terms. The terms of the members of the committee  
12 shall expire as follows:

13 (A) Two members on September 30, 2010.

14 (B) Five members on September 30, 2011.

15 (C) Five members on September 30, 2012.

16 (D) Five members on September 30, 2013.

17 (2) The members of the committee shall allocate the initial terms  
18 among themselves by lot or other method.

19 (f) Appointments to the committee shall be for terms of five  
20 years. Vacancies shall be immediately filled by the secretary based  
21 on recommendations from the committee for the unexpired portion  
22 of the terms in which they occur.

23 (g) The secretary and other appropriate individuals, as  
24 determined by the secretary, in consultation with the committee,  
25 shall be nonvoting ex officio members of the committee.

26 (h) Committee members may be compensated for reasonable  
27 expenses actually incurred in the performance of their duties, as  
28 determined by the secretary after consultation with the committee.

29 (i) The committee shall meet at the request of the secretary, the  
30 committee chairperson, or upon the request of three committee  
31 members.

32 (j) The committee shall appoint a chairperson, one or more vice  
33 chairpersons, and any other officers it deems necessary.

34 (k) The Legislature finds and declares that persons appointed  
35 to the committee are intended to represent and further the interests  
36 of the citrus industry, and that this representation and furtherance  
37 is intended to serve the public interest. Accordingly, the Legislature  
38 finds that, with respect to persons who are appointed to the  
39 committee, the citrus industry is tantamount to, and constitutes,

1 the public generally within the meaning of Section 87103 of the  
2 Government Code.

3 5915. (a) The powers and duties of the committee are limited  
4 to activities involving the producers of citrus fruit and residential  
5 owners of citrus fruit or other host material.

6 (b) The committee may do all of the following:

7 (1) Develop, subject to the approval of the secretary, a statewide  
8 citrus specific pest and disease work plan that includes, but is not  
9 limited to, the following:

10 (A) Informational programs to educate and train residential  
11 owners of citrus fruit, local communities, groups, and individuals  
12 on the prevention of pests, and diseases and their vectors, specific  
13 to citrus.

14 (B) Programs for the surveying, detecting, analyzing, and  
15 ~~treatment of treating~~ pests and diseases specific to citrus involving  
16 producers of citrus fruit and residential owners of citrus fruit.

17 (2) Submit recommendations to the secretary on, but not limited  
18 to, the following:

19 (A) Annual assessment rate.

20 (B) Annual budget.

21 (C) Expenditures necessary to implement the statewide work  
22 plan developed pursuant to this section.

23 (D) The amount of fees to be levied, as provided in Section  
24 5919.

25 (E) The receipt of money from other sources to pay any  
26 obligation of the committee and to accomplish the purposes of the  
27 committee in the manner provided in this article.

28 (3) Recommend to the secretary the adoption of regulations  
29 consistent with the powers and duties of the committee.

30 (c) The committee shall not engage in any activity deemed by  
31 the secretary to be contradictory to any eradication program or  
32 quarantine implemented to combat citrus specific pests, diseases,  
33 or related vectors.

34 (d) For any program or activity occurring pursuant to this  
35 section, the department shall be the lead agency, unless an  
36 agreement is reached between the committee and the secretary to  
37 authorize another agency within the state or local government to  
38 act as lead for specific activities.

1     5916. (a) Upon receipt of a recommendation from the  
2 committee for the adoption of regulations, the secretary shall do  
3 one of the following within 30 working days:

4     (1) Initiate the rulemaking process to adopt the recommendation  
5 of the committee.

6     (2) Decline to initiate the rulemaking process and provide the  
7 committee with a written statement of reasons for the decision.

8     (3) Request the committee to provide additional information  
9 regarding the recommended regulations.

10    (b) All regulations adopted pursuant to this article shall be  
11 adopted in compliance with the Administrative Procedure Act  
12 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
13 Division 3 of Title 2 of the Government Code), and may be  
14 subsequently repealed or amended as provided for in that act.

15    5917. No member or agent of the committee shall be personally  
16 liable for the actions of the committee or the department. No  
17 member or agent of the committee is responsible individually in  
18 any way to any other person for errors in judgment, mistakes, or  
19 other acts, by either commission or omission, as a principal, agent,  
20 or employee except for his or her own individual acts of dishonesty  
21 or crime. No member or agent of the committee is responsible  
22 individually for an act or omission of any other member or agent  
23 of the committee or the department. Liability is several and not  
24 joint, and no member or agent of the committee is liable for the  
25 default of any other member or agent of the committee or the  
26 department.

27    5918. The committee shall reimburse the secretary for all  
28 expenditures incurred by the secretary in carrying out his or her  
29 duties and responsibilities pursuant to this article, including the  
30 costs of implementing and administering the administrative,  
31 enforcement, and regulatory recommendations of the statewide  
32 work plan developed by the committee.

33    5919. (a) During the first marketing season, beginning  
34 February 1, 2010, and ending September 30, 2010, the monthly  
35 assessment to be paid by producers shall be one cent (\$0.01) per  
36 carton. Thereafter, in addition to any other assessments, fees, or  
37 charges that may be required pursuant to this code, producers shall  
38 pay a monthly assessment established by the committee that shall  
39 not exceed nine cents (\$0.09) per carton. The assessment shall be:

1 (1) Based on the number of 40-pound carton equivalents  
2 produced.

3 (2) Collected from the producer by the first handler. If a  
4 producer prepares the citrus fruit for market, the producer shall be  
5 deemed the handler.

6 (3) Remitted to the department by the first handler, along with  
7 an assessment report, at the end of each month during the marketing  
8 season.

9 (4) Deposited in the Citrus Disease Management Account in  
10 the Department of Food and Agriculture Fund or, upon the  
11 recommendation of the committee, deposited in accordance with  
12 Section 227 or Article 2.5 (commencing with Section 230) of  
13 Chapter 2 of Part 1 of Division 1. The use of the funds deposited  
14 in the Citrus Disease Management Account shall be limited to the  
15 activities authorized by this article.

16 (b) A producer producing less than 750 40-pound carton  
17 equivalents shall not be required to remit the assessment provided  
18 in subdivision (a).

19 (c) The committee may recommend to the secretary an  
20 assessment less than the amount specified in subdivision (a) or no  
21 assessment if no disease prevention program is necessary or if  
22 there is sufficient reserve to operate the program.

23 5920. (a) Upon establishment of a disease prevention program,  
24 any handler who does not file the required monthly assessment  
25 ~~form~~ report and assessments by the 10th day of the month  
26 following the month for which the assessment is payable shall pay  
27 a penalty of 10 percent of the assessment owed and, in addition,  
28 1 ½ percent interest per month on the unpaid balance.

29 (b) Upon establishment of a disease prevention program, it shall  
30 be unlawful for any handler to refuse to collect the assessments or  
31 remit the assessments and the proper reports required by this article.

32 (c) A handler shall not charge a producer an administrative fee  
33 for collecting or remitting an assessment.

34 (d) A producer who disputes the amount of the assessment may  
35 file a claim with the secretary. The producer shall prove his or her  
36 claim by a preponderance of the evidence.

37 (e) A producer may not bring any claim against a handler for  
38 damages, or otherwise, in connection with the assessment or the  
39 required deduction by the handler of the moneys owed to the  
40 producer as provided in this article.



1     5921. No later than June 30, 2013, the secretary shall hold one  
2 or more public hearings to determine whether the operation of this  
3 article should be continued. Thereafter, the secretary shall conduct  
4 the review process every four years.

5     5922. (a) If the secretary finds after the hearing that a  
6 substantial question of opposition exists among affected payers  
7 under this article regarding whether the operation of this article  
8 should be continued, the secretary shall submit the article for  
9 approval utilizing the following voting procedures set forth in this  
10 section and Sections 5923 to 5928, inclusive. As used in this  
11 subdivision, “substantial question of opposition” means opposition  
12 to the substance of the petition among currently affected assessment  
13 payers, and is not intended to mean a particular number of  
14 assessment payers.

15     (b) Within 90 days of the secretary determining the requirement  
16 for referendum has been met, the secretary shall establish a list of  
17 persons eligible to vote on the continued implementation of this  
18 article.

19     (c) Eligibility shall be limited to persons who paid the  
20 assessment on citrus fruit in the immediately preceding marketing  
21 season.

22     (d) (1) In establishing the list, the secretary may require  
23 handlers, producers, and others to submit the names, mailing  
24 addresses, and assessment values of all producers who paid the  
25 assessment on citrus fruit in the immediately preceding marketing  
26 season.

27     (2) The information required by the secretary shall be filed either  
28 with the monthly assessment form or no later than 30 days  
29 following receipt of a written notice from the secretary requesting  
30 the information.

31     (e) Any producer whose name does not appear on the secretary’s  
32 list may have his or her name added to the list by filing with the  
33 secretary a signed statement identifying himself or herself as a  
34 producer that paid an assessment during the most recent marketing  
35 season.

36     5923. For the purpose of voting in the referendum required in  
37 Section 5922, only a person required to pay the assessment  
38 pursuant to Section 5919 shall have the right to vote.

39     5924. In determining whether this article shall become  
40 inoperative, the secretary shall find that at least 40 percent of the

1 total number of persons from the list established by the secretary  
2 participated in the referendum, and that either one of the following  
3 occurred:

4 (a) Fifty-five percent or more of the persons who voted in the  
5 referendum voted in favor of this article, and the persons who  
6 voted paid a majority of the assessment dollars on citrus fruit in  
7 the preceding marketing season that were paid by all the persons  
8 who voted in the referendum.

9 (b) A majority of the persons who voted in the referendum voted  
10 in favor of this article, and the persons who voted paid 55 percent  
11 or more of the assessment dollars on citrus fruit in the preceding  
12 marketing season that were paid by all the persons who voted in  
13 the referendum.

14 5925. In determining whether the referendum is approved by  
15 producers pursuant to the provisions of this article, the secretary  
16 shall consider the vote in favor of the referendum of any nonprofit  
17 agricultural cooperative marketing association, which is authorized  
18 by its members so to assent, as being the assent, approval, or favor  
19 of the producers that are members of, or stockholders in, that  
20 nonprofit agricultural cooperative marketing association.

21 5926. The secretary shall establish a period in which to conduct  
22 the referendum that shall not be less than 10 days nor more than  
23 60 days in duration. The secretary may prescribe additional  
24 procedures to conduct the referendum. If the initial period  
25 established is less than 60 days, the secretary may extend the  
26 period. However, the total referendum period may not exceed 60  
27 days.

28 5927. Nonreceipt of a ballot shall not invalidate a referendum.

29 5928. (a) If the secretary finds that a favorable vote has not  
30 been given as provided in this article, this article shall become  
31 inoperative within one year of the referendum.

32 (b) If the secretary finds that a favorable vote has been given  
33 as provided in this article, he or she shall certify and give notice  
34 of the favorable vote to all persons whose names and addresses  
35 may be on file with the secretary as provided in Section 5922.

36 5929. Upon termination of this article, and based upon a  
37 recommendation of the committee subject to approval by the  
38 secretary, any collected assessments not required to defray financial  
39 obligations incurred pursuant to this article shall be returned on a  
40 pro rata basis to all persons from whom assessments were collected

1 during the marketing season immediately preceding the date of  
2 termination or paid to any existing state or federal program engaged  
3 in citrus specific pest and disease prevention activities. The  
4 assessments refunded to handlers shall be paid to producers if the  
5 assessment was previously deducted from moneys owed to the  
6 producer by the handler.

7 5930. (a) The provisions of this article are severable.

8 (b) If any provision of this article or its application is held  
9 invalid, that invalidity shall not affect other provisions or  
10 applications that can be given effect without the invalid provision  
11 or application.

12 SEC. 2. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.